

A Non-Discriminatory Consumer-Focused Approach to Universal Service Reform

Presentation to the Telecommunications Access Policy Division

**by
CTIA - The Wireless Association™**

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- Wireless carriers are bringing vital benefits to consumers in high-cost rural areas.
- Universal service support should be distributed in both a competitively- and technologically-neutral manner.
- CTIA supports the establishment of voluntary eligible telecommunications carrier (ETC) designation guidelines.
- The Commission should consider more fundamental reforms to the underlying universal service mechanisms that fulfill the Act's competition and universal service goals.

Wireless Eligible Telecommunications Carriers Provide Vital Benefits to Rural Consumers

- CMRS providers are the only competitive providers of high-quality, affordable, and facilities-based telecommunications services throughout rural areas.
- Wireless deployment in rural areas has occurred, in part, because of competitively neutral access to high-cost and low-income universal service support.
- Wireless ETCs have brought universal service to rural and insular areas that have traditionally been underserved or unserved by incumbent LECs.
- Due to geographic isolation, topography, and other factors, the cost of providing wireless service in rural areas is typically higher than in urban areas.
- To facilitate wireless deployment in rural areas, the Commission should ensure that competitors continue to have competitively neutral access to universal service support through the ETC designation process and support calculations.

The Communications Act Requires Competitively- and Technologically-Neutral Distribution of Universal Service Funds

- *The Rural Task Force*

“Section 254(b) and 214(e) of the 1996 Act provide the statutory framework for a system that encourages competition while preserving and advancing universal service.”

- *FCC First Report and Order on Universal Service*

Universal service mechanisms and rules should “neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor one technology or another.”

- *FCC Ninth Report and Order on Universal Service*

“The same amount of support...received by an incumbent LEC should be fully portable to competitive providers.”

The Communications Act Requires Competitively- and Technologically-Neutral Distribution of Universal Service Funds (cont'd)

- Court decisions also support nondiscrimination in the universal service context. In *Alenco Communications, Inc. v. FCC*, the U.S. Court of Appeals for the Fifth Circuit:
 - stated that the universal service “program must treat all market participants equally – for example, subsidies must be portable – so that the market, and not local or federal regulators, determines who shall compete for and deliver services to customers.”
 - noted that the principle of competitive neutrality “is made necessary not only by the realities of competitive markets but also by statute.”

Wireless ETCs Only Receive a Small Portion of High-Cost Support

- Incumbent LECs continue to receive approximately 93% of high-cost universal service support.
- In 2003, CMRS carriers paid \$1.4 billion for universal service, while receiving only \$175 million of all universal service subsidies.
- From 2000 through 2003 incumbent LECs were responsible for over 90% of growth in the high-cost fund. The FCC cannot disregard USF growth resulting from interstate access reform.

CTIA Supports Competitively- and Technologically-Neutral ETC Designation Guidelines

- The FCC can and should process ETC petitions more rapidly than in the past.
- The FCC and states generally do a good job processing ETC petitions.
- Voluntary guidelines that go no further than Virginia Cellular could aid states in evaluating whether an ETC designation is in the public interest.
- The Communications Act prohibits mandatory ETC designation guidelines.

CTIA Supports Competitively- and Technologically-Neutral ETC Designation Guidelines (cont'd)

- The FCC should reject proposals for ETC guidelines that discriminate against wireless carriers.
 - There is no basis for imposing equal access obligations on wireless ETCs.
 - Requiring prospective ETCs to demonstrate financial resources is not competitively neutral and is unnecessary.
 - There is no basis for limiting the number of competitive ETCs in rural areas.
 - There is no basis to refuse to designate competitive ETCs below the study area level.
- The rules should be modified so that competitive ETCs should immediately begin receiving support upon designation.
- Any new ETC guidelines should not be retroactively applied to certified ETCs.

The Joint Board's Discriminatory “Primary Line” Proposals Are Unlawful and Unworkable

- The Joint Board's proposals would unlawfully discriminate against competitive ETCs.
 - The Joint Board's “primary line” proposals are nothing more than attempts slow the growth of sustainable competition in rural areas by drastically reducing support available to competitive ETCs, while shielding incumbent LECs from the impacts of competitive choice.
 - The Joint Board's focus on maintaining current levels of high-cost support flowing to incumbent carriers disregards the fact that the Act demands “sufficient funding for *customers*, not *providers*.”
 - Joint Board's “primary line” proposals would be inconsistent with the principle of competitive neutrality because they make certain categories of support available to incumbents, but not competitive ETCs.

The Joint Board's Discriminatory “Primary Line” Proposals Are Unlawful and Unworkable (cont'd)

- The Joint Board's primary line proposals present insurmountable administrative issues. The Commission needs to:
 - Define “primary” lines.
 - Address the sticky issue of how to identify primary lines where customers at a given location are also receiving lines from facilities-based competitive LECs or CMRS providers.
 - Address how to apply a primary line restriction to multi-line businesses.
 - Develop procedures to avoid undercounting the primary lines associated with multiple-customer locations.
 - Adopt procedures for customers to make their initial primary line selection without favoring the incumbent.
 - Determine how frequently carriers would need to update their primary lines without imposing overly burdensome reporting obligations.

The FCC Should Reject Proposals to Discriminate Against Wireless ETCs in the Calculation of Support

- Proposals presented by Rural Telecommunications Association (RTA) and the Coalition of State Telecommunications Associations and Rural Telephone Companies (Coalition):
 - Are discriminatory against wireless ETCs.
 - Require the FCC to abandon a bedrock principle of universal service portability which provides an equal amount of support to all ETCs serving an area.
- The RTA and Coalition proposals to limit high-cost support to competitive ETCs have no policy or legal support and are designed solely to maintain the incumbent LECs' virtual monopoly on high-cost universal service support.
- To control the growth of the high cost fund, the FCC should focus on the underlying causes of the growth-the funding mechanism itself.

CTIA High-Cost Reform Proposal

- The FCC should adopt nondiscriminatory policies that achieve the twin goals of facilitating sustainable facilities-based competition and ensuring that consumers in rural and high-cost areas have universal, affordable access to high-quality services. At the same time, the FCC must ensure that universal service support is no more than necessary to achieve these goals.
- This can best be achieved through fundamental reforms to the FCC's high-cost support universal service mechanisms.
- Under CTIA's proposal, the FCC would modify the existing high-cost mechanisms, while transitioning to a new high-cost mechanism for all eligible carriers. The ultimate result of such reform should be a simplified, unified support mechanism that replaces the five high-cost mechanisms currently in place.

CTIA High-Cost Reform Proposal (cont'd)

- Effective July 1, 2006, the FCC should adopt the following short-term measures
 - Move all incumbent LECs, that, along with their affiliates, have 50,000 or more access lines in a state to support based on forward-looking economic costs.
 - Modify the existing embedded cost mechanisms:
 - Remove non-loop costs such as risk-related profits and Corporate Operations Expenses from the high-cost support mechanisms.
 - Reduce the threshold to qualify for local switching support from 50,000 access lines in a state to a lower number and/or limit support to those incumbent LECs with higher than average switching costs.
 - Place a freeze on further growth in embedded high-cost support while the FCC implements long-term reforms.
- Under long-term reform, the FCC should
 - Transition all remaining incumbent LECs to a unified forward-looking high-cost support mechanism.
 - Consider developing a high-cost mechanism that directs equal per-line support to both incumbent and competitive ETCs based on the costs of the most efficient technology in a selected area.
- The FCC must set firm deadlines for reform.